

MT LEGISLATIVE HISTORY

Chapter 125 19 75

Bill H _____ (S) 395

Original bill & hist. ☒ C

H. Committee on Natural Resources

S. Committee on Agriculture, Livestock & Irrigation

Hearing Date(s) MAR 15 ☒ C

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Date Out _____ ☐ C

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Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

1 *Senate* BILL NO. *395*
 2 INTRODUCED BY *Roberts*
 3 *Dept. of Natural Resources*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE MONTANA
 5 WATER USE ACT BY PROVIDING ADDITIONAL DEFINITIONS; DELETING
 6 THE PROVISION THAT A USE OF WATER FOR SLURRY TO EXPORT COAL
 7 IS NOT A BENEFICIAL USE; DELETING THE POWER OF THE BOARD OF
 8 NATURAL RESOURCES AND CONSERVATION TO ADOPT RULES GOVERNING
 9 INTERIM APPROVAL OF A CHANGE OF AN APPROPRIATION RIGHT;
 10 PROVIDING THAT THE DEPARTMENT SHALL CEASE ACTION ON
 11 APPLICATIONS NOT IN GOOD FAITH OR NOT SHOWING A BONA FIDE
 12 INTENT TO APPROPRIATE WATER FOR A BENEFICIAL USE; REQUIRING
 13 THE DISTRICT COURT RATHER THAN THE DEPARTMENT TO ISSUE THE
 14 ORDER REQUIRING CLAIMANTS OF EXISTING RIGHTS TO FILE
 15 DECLARATIONS; CLARIFYING THE PRIORITY DATE FOR CONVERTED OIL
 16 OR GAS WELLS; ALLOWING SUSPENSION OF PUBLICATION OF NOTICE
 17 OF CERTAIN PERMIT APPLICATIONS; PROVIDING FOR EXTENSION OF
 18 TIME TO ACT ON AN APPLICATION; CLARIFYING THE PRIORITY DATE
 19 FOR RESERVATIONS OF WATER; CLARIFYING THE PROCEDURE TO BE
 20 FOLLOWED IN THE COURTS' SUPERVISION OF WATER DISTRIBUTION;
 21 PROVIDING A NEW SECTION FOR ADMINISTRATIVE ENFORCEMENT OF
 22 THE ACT; REQUIRING NOTIFICATION PRIOR TO HEARINGS BEFORE THE
 23 BOARD; SPECIFYING THE APPLICABILITY OF THE RULES OF EVIDENCE
 24 IN ADMINISTRATIVE HEARINGS; PROVIDING A SAVING CLAUSE;
 25 AMENDING SECTIONS 89-867, 89-869, 89-872 THROUGH 89-876,

INTRODUCED BILL

1 89-880, 89-881, 89-884, 89-890, 89-896, 89-8-100, AND
 2 89-8-101, R.C.M. 1947; AND PROVIDING FOR AN IMMEDIATE
 3 EFFECTIVE DATE."

4
 5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

6 Section 1. Section 89-867, R.C.M. 1947, is amended to
 7 read as follows:

8 "89-867. Definitions. Unless the context requires
 9 otherwise, in this act chapter:

10 (1) "Water" means all water of the state, surface and
 11 subsurface, regardless of its character or manner of
 12 occurrence, including geothermal water.

13 (2) "Beneficial use" means a use of water for the
 14 benefit of the appropriator, other persons, or the public,
 15 including, but not limited to, agricultural (including stock
 16 water), domestic, fish and wildlife, industrial, irrigation,
 17 mining, municipal power, and recreational uses; ~~provided,~~
 18 ~~however-that-a-use-of-water-for-slurry-to-export-coal--from~~
 19 ~~Montana--is--not--a--beneficial--user--Slurry-is-a-mixture-of~~
 20 ~~water-and-insoluble-matter.~~

21 (3) "Appropriate" means to divert, impound, or
 22 withdraw (including by stock for stock water) a quantity of
 23 water, or in the case of a public agency to reserve water in
 24 accordance with section 89-890.

25 (4) "Existing right" means a right to the use of water

1 which would be protected under the law as it existed prior
2 to ~~the effective date of this act~~ July 1, 1973.

3 (5) "Groundwater" means any water beneath the land
4 surface or beneath the bed of a stream, lake, reservoir, or
5 other body of surface water, and which is not a part of that
6 surface water.

7 (6) "Well" means any artificial opening or excavation
8 in the ground, however made, by which groundwater is sought
9 or through which it flows under natural pressures or is
10 artificially withdrawn.

11 (7) "Permit" means the permit to appropriate issued by
12 the department under sections 89-880 through 89-887.

13 (8) "Certificate" means the certificate of water right
14 issued by the department under sections 89-879, 89-880
15 ~~(4)-(5)~~, and 89-888.

16 (9) "Declaration" means the declaration of an existing
17 right filed with the department under section 89-872.

18 (10) "Waste" means the unreasonable loss of water
19 through the design or negligent operation of an
20 appropriation or water distribution facility, or the
21 application of water to anything but a beneficial use.

22 (11) "Political subdivision means any county,
23 incorporated city or town, public corporation or district
24 created pursuant to state law, or other public body of the
25 state empowered to appropriate water, but not a private

1 corporation, association, or group.

2 ~~(11)-(12)~~ "(12) "Person" means an individual, association,
3 partnership, corporation, state agency, political
4 subdivision, and the United States or any agency thereof.

5 ~~(12)-(13)~~ "(13) "Department" means the department of natural
6 resources and conservation provided for in Title 82A,
7 chapter 15.

8 ~~(13)-"Director"-means-the-director-of-natural-resources~~
9 ~~and--conservation;--a--position--provided--for--in--section~~
10 ~~82A-1510.~~

11 (14) "Board" means the board of natural resources and
12 conservation provided for in section 82A-1509.

13 (15) "Act" means the Montana Water Use Act and any
14 subsequent amendments or additions thereto."

15 Section 2. Section 89-869, R.C.M. 1947, is amended to
16 read as follows:

17 "89-869. Powers and duties of board. (1) The board may
18 prescribe fees or service charges for any public service
19 rendered by the department under this act or under Title 89,
20 chapter 28, including fees for the filing of applications or
21 for the issuance of permits and certificates. There shall be
22 no fees for the filing of declarations or for the issuance
23 of certificates of existing rights.

24 (2) The board may adopt rules necessary to implement
25 and carry out the purposes and provisions of this act. These

1 rules may include, but are not limited to, rules to:

2 (a) govern the issuance and terms of interim permits
3 authorizing an applicant for a regular permit under this act
4 to begin appropriating water immediately, pending final
5 approval or denial by the department of the application for
6 a regular permit;

7 (b) require the owner or operator of appropriation
8 facilities to install and maintain suitable controlling and
9 measuring devices;

10 (c) require the owner or operator of appropriation
11 facilities to report to the department the readings of
12 measuring devices at reasonable intervals, and to file
13 reports on appropriations; and

14 (d) regulate the construction, use and sealing of
15 wells to prevent the waste, contamination or pollution of
16 groundwater; and

17 ~~(e) govern the issuance and terms of interim approval,~~
18 ~~authorizing an appropriator to change his appropriation~~
19 ~~right immediately pending final approval or denial by the~~
20 ~~department of the application for a proposed change in~~
21 ~~accordance with section 89-892.~~

22 (3) The board shall adopt rules providing for and
23 governing temporary emergency appropriations, without prior
24 application for a permit, necessary to protect lives or
25 property."

1 Section 3. Section 89-872, R.C.M. 1947, is amended to
2 read as follows:

3 "89-872. Declarations of existing rights. (1) The
4 department shall obtain from the district court make an
5 order pursuant to section 89-873 requiring each person
6 claiming an existing right within a specified area or from a
97 specified source to file a declaration of existing right
8 within one (1) year after the effective date of the order.
9 The department shall publish notice of the order once a week
10 for four (4) consecutive weeks prior to its effective date
11 in a newspaper of general circulation in the affected area.
12 Before the last date of publication, the department shall
13 also serve a copy of the order by certified mail upon each
14 appropriator or his successor in interest within the
15 specified area or from the specified source who has
16 requested mailed notice of the order or of whom the
17 department can readily obtain knowledge, and to each person
18 owning or being possessed of lands bordering on the stream
19 or source as ascertained from the land ownership records of
20 the appropriate county. The department shall file in its
21 records proof of service of the notice by affidavit of the
22 publisher in the case of notice by publication, and by its
23 own affidavit in the case of service by mail.

24 (a) The department of fish and game may represent the
25 public for purposes of establishing any prior and existing

public recreational use in existing right determinations under this act, provided that the foregoing shall not be construed in any manner as a legislative determination of whether or not a recreational use sought to be established prior to July 1, 1973, is or was a beneficial use.

(2) A declaration shall be made under oath by each person claiming an existing right to use water within the specified area or from the specified source on a form provided by the department. The department shall make the forms available through its offices and the offices of the county clerks and recorders. The information required by the department may include, but is not limited to, the date of appropriation, the date the water was first applied to a beneficial use, the amount of water appropriated, the purpose of the appropriation, the place and means of diversion, the place of use, the time during which the water is diverted and used each year, and a true copy or the docket number of any judicial decree, notice, or other claim or evidence upon which the existing right was initiated or is based.

(3) Declarations shall be sent to the department by certified mail, with a return receipt requested. The return receipt is conclusive evidence of receipt, by the department, of the declaration."

Section 4. Section 89-873, R.C.M. 1947, is amended to

read as follows:

"89-873. Filing of petition. (1) ~~The department shall, within a reasonable time after gathering all data necessary under section 7 of this act, file a petition for determination of existing rights in the source or area specified in the order made under section 8 of this act. The department shall file the petition in the district court of the judicial district in which the source or area is located.~~ Proceedings for the determination of existing rights shall be commenced by the department in the district court of the judicial district in which the source or area is located. The department shall request by petition, and the district court shall issue an order requiring each person claiming an existing right within a specified area or from a specified source to file a declaration as provided in section 89-872.

(2) If the source or area is in two (2) or more judicial districts, the department shall notify the district court of each of the judicial districts of its intent to file the petition. Within thirty (30) days of receipt of the notice, the judges of those district courts shall agree on which district judge shall hear receive the petition and shall notify the department of their decision. If the district judges fail to agree or to notify the department, the department shall file the petition in the district court

of the judicial district in which it determines that the greatest number of persons--named--in--the--petition--reside existing rights are likely to be located."

Section 5. Section 89-874, R.C.M. 1947, is amended to read as follows:

"89-874. Contents of petition. (1) Within a reasonable time after gathering all data necessary under section 89-871, The--petition the department shall state file with the district court the names of all persons who have filed declarations under section ~~8-89-872~~ of this act and of all other persons who appear from the data gathered by the department to have existing rights to the use of waters within the specified area or from the specified source.

(2) The department shall also file with the petition district court all data gathered under section ~~7-89-871~~ of this act.

(3) If the district court determines that additional data is necessary prior to issuing the preliminary decree in order to determine the extent of an existing right, it may direct the department or the person claiming the right to obtain the necessary data."

Section 6. Section 89-875, R.C.M. 1947, is amended to read as follows:

"89-875. Preliminary decree. (1) Within a reasonable time after the ~~filing--of-a-petition-for-determination-of~~

~~existing-rights~~ department files with the district court the material required by section 89-874, the court shall issue a preliminary decree. The preliminary decree shall be based on the data submitted ~~with-the-petition~~ by the department and on any additional data obtained by the court.

(2) The preliminary decree shall contain the information, and make the determinations, findings, and conclusions, required for the final decree under section ~~89-877~~ of this act.

(3) The district court shall send a copy of the preliminary decree by certified mail with return receipt requested to the department and to each person named in the ~~petition--filed~~ material submitted under section ~~9-89-873~~ 89-874 of this act or named in the preliminary decree. The return receipt shall be appended to the preliminary decree. The costs of mailing the copies shall be paid by the department.

(4) A person named in the petition material or in the preliminary decree may inspect the data upon which the decree is based at any time, and he may purchase copies of any of the data."

Section 7. Section 89-876, R.C.M. 1947, is amended to read as follows:

"89-876. Hearing on preliminary decree. (1) The department or a person named in the petition material filed

1 under section ~~9-66-873~~ 89-874 of this act or named in the
2 preliminary decree, or any other person for good cause
3 shown, who objects to the preliminary decree is entitled to
4 a hearing thereon before the district court.

5 (2) A request for a hearing shall be filed with the
6 district court, and a copy served on the department by
7 certified mail, within ninety (90) days after receipt of the
8 preliminary decree. The district court shall, for good cause
9 shown, reasonably extend this time limit if application for
10 the extension is made within ninety (90) days after receipt
11 of the preliminary decree. A person requesting a hearing on
12 his objections to the preliminary decree shall also serve,
13 by certified mail with return receipt requested, a copy of
14 his request on any person whose rights or priorities will be
15 affected if the objections are sustained in the hearing. The
16 rights and priorities of a person who is not served shall
17 not be affected by the result of the hearing.

18 (3) The request for a hearing shall contain a precise
19 statement of the findings and conclusions, in the
20 preliminary decree, with which the person requesting the
21 hearing disagrees. The request shall specify the paragraphs
22 and pages containing the findings and conclusions to which
23 objection is made. The request shall state the specific
24 grounds and evidence on which the objections are based. The
25 request shall also state the names of all other persons on

1 whom it is served.

2 (4) If more than one person requests a hearing on
3 objections to the preliminary decree, the court may in its
4 discretion hold a single hearing. Each hearing shall be
5 conducted as are other civil actions, but the parties to the
6 hearing may by agreement and with the court's permission
7 waive any of the procedural or evidentiary rules, or may
8 submit only written evidence. Only evidence which is
9 referred to in a request may be introduced in a hearing.

10 (5) In each hearing, the department shall be a party
11 and is entitled to be heard on objections made by any
12 person. The department shall be granted adequate time, prior
13 to a hearing, to gather evidence pertinent to any objection
14 to be heard in the hearing."

15 Section 8. Section 89-880, R.C.M. 1947, is amended to
16 read as follows:

17 "89-880. Right to appropriate -- application for
18 permit. (1) After ~~the effective date of this act~~ July 1,
19 1973, a person may not appropriate water except as provided
20 in this act. A person may only appropriate water for a
21 beneficial use. A right to appropriate water may not be
22 acquired by any other method, including by adverse use,
23 adverse possession, prescription or estoppel; the method
24 prescribed by this act is exclusive.

25 (2) Except as otherwise provided in subsection ~~44~~ (5)

1 of this section, a person may not appropriate water or
 2 commence construction of diversion, impoundment, withdrawal,
 3 or distribution works therefore except by applying for and
 4 receiving a permit from the department. The application
 5 shall be made on a form prescribed by the department. The
 6 department shall make the forms available through its
 7 offices and the offices of the county clerks and recorders.
 8 The department shall return a defective application for
 9 correction or completion together with the reasons for
 10 returning it. An application does not lose priority of
 11 filing because of defects, if the application is corrected,
 12 completed and refiled with the department within thirty (30)
 13 days after its return to the applicant, or within a further
 14 time as the department may allow.

15 (3) The department may cease action upon an
 16 application for a permit and return it to the applicant when
 17 it finds that the application is not in good faith or does
 18 not show a bona fide intent to appropriate water for a
 19 beneficial use. An application returned for any of these
 20 reasons shall be accompanied by a statement of the reasons
 21 for which it was returned, and there shall be no right to a
 22 priority date based upon the filing of the application.
 23 Returning an application pursuant to this subsection shall
 24 be deemed a final decision of the department.

25 ~~(3)~~--(4) A permit issued prior to a final

1 determination of existing rights is provisional and is
 2 subject to that final determination. The amount of the
 3 appropriation granted in a provisional permit shall be
 4 reduced or modified where necessary to protect and guarantee
 5 existing rights determined in the final decree. A person may
 6 not obtain any vested right, to an appropriation obtained
 7 under a provisional permit, by virtue of construction of
 8 diversion works, purchase of equipment to apply water,
 9 planting of crops, or other action, where the permit would
 10 have been denied or modified if the final decree had been
 11 available to the department.

12 ~~(4)~~--(5) Outside the boundaries of a controlled
 13 groundwater area, a permit is not required before
 14 appropriating groundwater by means of a well with a maximum
 15 yield of less than one hundred (100) gallons a minute.
 16 Within sixty (60) days of completion of the well, the
 17 appropriator shall file notice of completion on a form
 18 provided by the department at its offices and at the offices
 19 of the county clerks and recorders. Upon receipt of the
 20 notice, the department shall automatically issue a
 21 certificate of water right. The original of the certificate
 22 shall be sent to the county clerk and recorder, in the
 23 county where the point of diversion or place of use is
 24 located, for recordation. The department shall keep a copy
 25 of the certificate in its office in Helena. After

recordation, the clerk and recorder shall send the certificate to the appropriator. The date of filing of the notice of completion is the date of priority of the right.

~~(5)--(6) Persons--required-to-file-well-logs-and-other information-under-the-laws-governing-the-conservation-of-oil and-gas-and-who-do-so-in-compliance-with-these-laws,--shall be--considered--to--have--complied--with--all--of-the-filing requirements-of-this-act-to-the-extent-it-applies--to--wells subject--to--these--laws. The-date-of-appropriation-shall-be the-date-that-written-notice-of-intention-to-drill-is--given to--the-board-of-oil--and--gas-conservation. A person who desires to convert a nonproductive oil or gas well to a water well may do so immediately, but shall file a notice of completion or apply for a permit, depending on the maximum yield of the well, as otherwise provided in this act. The date of appropriation shall be the date of filing the notice of completion or the application for a permit.~~

~~(6)--(7) A person may also appropriate water, without applying for or prior to receiving a permit, under rules adopted by the board under section 89-869 of this act."~~

Section 9. Section 89-881, R.C.M. 1947, is amended to read as follows:

"89-881. Notice of application. (1) Upon receipt of a proper application for a permit, the department shall prepare a notice containing the facts pertinent to the

application and shall publish the notice in a newspaper of general circulation in the area of the source once a week for three (3) consecutive weeks. Before the last date of publication, the department shall also serve the notice by certified mail upon an appropriator of water or applicant for or holder of a permit who, according to the records of the department, may be affected by the proposed appropriation. A notice shall also be served upon any public agency that has reserved waters in the source under section 26--(89-890). The department may, in its discretion, also serve notice upon any state agency or other person the department feels may be interested in or affected by the proposed appropriation. The department shall file in its records proof of service by affidavit of the publisher in the case of notice by publication, and by its own affidavit in the case of service by mail.

(2) The notice shall state that by a date set by the department (not less than thirty (30) days nor more than sixty (60) days after the last date of publication) persons may file with the department written objections to the application.

(3) The requirements of subsections (1) and (2) of this section do not apply if the department finds, on the basis of information reasonably available to it, that the appropriation as proposed in the application will not

1 adversely affect the rights of other persons."

2 Section 10. Section 89-884, R.C.M. 1947, is amended to
3 read as follows:

4 "89-884. Action on application. (1) The department
5 shall grant, deny, or condition an application for a permit
6 in whole or in part within one hundred twenty (120) days
7 after the last date of publication of the notice of
8 application if no hearing is held, and within one hundred
9 eighty (180) days if a hearing is held; however, in either
10 case the time may be extended upon agreement of the
11 applicant, or, in extraordinary cases, not more than thirty
12 (30) days upon order of the department. If the department
13 orders the time extended it shall serve a notice of the
14 extension and the reasons therefor by certified mail upon
15 the applicant and each person who has filed an objection as
16 provided by section 89-882.

17 (2) However, an application may not be approved in a
18 modified form or upon terms, conditions, or limitations
19 specified by the department, nor denied, unless the
20 applicant is first granted an opportunity to be heard. If
21 no objection is filed against the application, but the
22 department is of the opinion that the application should be
23 approved in a modified form or upon terms, conditions or
24 limitations specified by it, or that the application should
25 be denied, the department shall prepare a statement of its

1 opinion and the reasons therefor. The department shall serve
2 a statement of its opinion by certified mail upon the
3 applicant, together with a notice that the applicant may
4 obtain a hearing by filing a request therefor within thirty
5 (30) days after the notice is mailed. The notice shall
6 further state that the application will be modified in a
7 specified manner, or denied, unless a hearing is requested."

8 Section 11. Section 89-890, R.C.M. 1947, is amended to
9 read as follows:

10 "89-890. Reservation of waters. (1) The state or any
11 political subdivision or agency thereof, or the United
12 States or any agency thereof, may apply to the board to
13 reserve waters for existing or future beneficial uses, or to
14 maintain a minimum flow, level, or quality of water
15 throughout the year or at such periods or for such length of
16 time as the board designates.

17 (2) Upon receiving an application, the department
18 shall proceed in accordance with sections ~~17--through--19~~
19 ~~189-881 through 89-883~~. After the hearing provided in
20 section ~~19-189-883~~, the board shall decide whether to
21 reserve the water for the applicant. The department's costs
22 of giving notice, holding the hearing, conducting
23 investigations, and making records, incurred in acting upon
24 the application to reserve water, except the cost of
25 salaries of the department's personnel, shall be paid by the

1 applicant.

2 (3) The board may not adopt an order reserving water
3 unless the applicant establishes to the satisfaction of the
4 board:

5 (a) the purpose of the reservation;

6 (b) the need for the reservation;

7 (c) the amount of water necessary for the purpose of
8 the reservation;

9 (d) that the reservation is in the public interest. If
10 the purpose of the reservation requires construction of a
11 storage or diversion facility, the applicant shall establish
12 to the satisfaction of the board that there will be progress
13 toward completion of the facility and accomplishment of the
14 purpose with reasonable diligence in accordance with an
15 established plan.

16 (4) After the adoption of an order reserving waters,
17 the department may reject an application and refuse a permit
18 for the appropriation of reserved waters, or may, with the
19 approval of the board, issue the permit subject to such
20 terms and conditions it considers necessary for the
21 protection of the objectives of the reservation.

22 (5) A reservation under this section shall date from
23 the date the order reserving the water is adopted by the
24 board, and shall not adversely affect any rights in
25 existence at that time when the order reserving waters is

1 ~~is adopted.~~

2 (6) The board shall, periodically but not less than
3 every ten (10) years, review existing reservations to ensure
4 that the objectives of the reservation are being met. Where
5 the objectives of the reservation are not being met, the
6 board may extend, revoke or modify the reservation."

7 Section 12. Section 89-896, R.C.M. 1947, is amended to
8 read as follows:

9 "89-896. Supervision of water distribution. (1) ~~As of~~
10 ~~the effective date of this act, the~~ The district courts
11 shall supervise the distribution of water among all
12 appropriators. This supervisory authority includes the
13 supervision of all water commissioners appointed prior or
14 subsequent to the effective date of this act. The
15 supervision shall be governed by the principle that first in
16 time is first in right.

17 (2) When a water distribution controversy arises upon
18 a source of water in which existing rights have not been
19 determined according to sections ~~6--through--15--189-870~~
20 ~~through 80-3784 of this act, any party to the controversy~~
21 may petition the district court for relief. the The
22 department may, shall be served with process in any
23 proceeding under this subsection and shall, within a
24 reasonable time thereafter, notify the court whether it
25 intends in its discretion, within a reasonable time, to

1 begin proceedings to determine existing rights in the
 2 source, in accordance with this act. The department may, if
 3 it declines to commence proceedings to determine existing
 4 rights in the source, intervene as a party in the
 5 proceeding. The district court from which relief is sought
 6 may grant such injunctive or other relief which is necessary
 7 and appropriate to preserve property rights or the status
 8 quo pending the department's decision whether to determine
 9 existing rights in the source, or the department's decision
 10 to intervene as a party, as the case may be. If the
 11 department does not proceed to obtain a determination of
 12 existing rights, the district court shall settle only the
 13 controversy between the parties.

14 (3) A controversy between appropriators from a source
 15 which has been the subject of a general determination of
 16 existing rights under sections ~~6-through-15~~ 89-870 through
 17 89-875 ~~of this act~~ shall be settled by the district court
 18 which issued the final decree. The order of the district
 19 court settling the controversy may not alter the existing
 20 rights and priorities established in the final decree. In
 21 cases involving permits issued by the department, the court
 22 may not amend the respective rights established in the
 23 permits or alter any terms of the permits unless the permits
 24 are inconsistent or interfere with rights and priorities
 25 established in the final decree. The order settling the

1 controversy shall be appended to the final decree, and a
 2 copy shall be filed with the department. The department
 3 shall be served with process in any proceeding under this
 4 subsection, and the department may, in its discretion,
 5 intervene in the proceeding.

6 ~~{4}--The department shall be named as a party in any~~
 7 ~~proceeding under this section and shall be served with~~
 8 ~~process."~~

9 Section 13. There is a new R.C.M. section numbered
 10 89-879.1 that reads as follows:

11 89-879.1. Enforcement. (1) A person may not waste
 12 water, prevent water from moving to another person having a
 13 prior right to use the same, or otherwise use water
 14 unlawfully.

15 (2) If the department ascertains by a means reasonably
 16 considered sufficient by it that a person is violating
 17 subsection (1) of this section or is otherwise violating any
 18 provision of this act or a rule made pursuant thereto, it
 19 may cause written notice to be served on the alleged
 20 violator. The notice shall specify the provision of this
 21 act or rule alleged to be violated, and the facts alleged to
 22 constitute a violation, and it may order the violator to
 23 take necessary corrective action within a reasonable period
 24 of time stated in the order. The order becomes final
 25 unless, no later than thirty (30) days after the date the

1 notice is received, the person named requests in writing a
 2 hearing before the department. Not more than fifteen (15)
 3 days after receipt of the request, the department shall hold
 4 a hearing.

5 (3) If, after a hearing held under subsection (1) of
 6 this section, the department finds that a violation has
 7 occurred, it shall either affirm or modify the order
 8 previously issued, or issue an appropriate order for the
 9 prevention or abatement of the violation involved or for the
 10 taking of other corrective action it considers appropriate.
 11 If, after hearing on an order contained in a notice, the
 12 department finds that no violation is occurring, it shall
 13 rescind the order. An order issued as part of a notice or
 14 after hearing may prescribe the date by which the violation
 15 shall cease and may prescribe time limits for particular
 16 action in preventing, abating, or controlling the violation.

17 (4) The department may direct its own attorney, or
 18 request the attorney general or the county attorney to
 19 enforce orders issued pursuant to this section by
 20 appropriate judicial proceedings.

21 (5) This act does not prevent the department from
 22 making efforts to obtain voluntary compliance through
 23 warning, conference, or any other appropriate means.

24 Section 14. Section 89-8-100, R.C.M. 1947, is amended
 25 to read as follows:

1 "89-8-100. Hearings before board -- Administrative
 2 Procedure Act. (1) A person who is aggrieved by a final
 3 decision of the department under this act is entitled to a
 4 hearing before the board. A person desiring a hearing
 5 before the board pursuant to this section shall notify the
 6 department in writing within ten (10) days of the final
 7 decision.

8 (2) The Montana Administrative Procedure Act (Title
 9 82, chapter 42, R.C.M. 1947) governs administrative
 10 proceedings conducted under this act, except that the common
 11 law and statutory rules of evidence shall apply only upon
 12 stipulation of all parties to a proceeding."

13 Section 15. Section 89-8-101, R.C.M. 1947, is amended
 14 to read as follows:

15 "89-8-101. Penalties. A person who violates or refuses
 16 or neglects to comply with sections ~~16-117-28-117--and--29~~
 17 ~~13--189-880 (1), 89-892 (1), and 89-893 (3), and 89-897.1~~ ~~1~~
 18 ~~of this act~~, or of any order of the department, or of any
 19 rule of the board, is guilty of a misdemeanor."

20 Section 16. There is a new R.C.M. section numbered
 21 89-8-102.1 that reads as follows:

22 "89-8-102.1. Saving clause. Nothing in this act abates
 23 or otherwise adversely affects the validity of any filing,
 24 notice, or judicial proceeding commenced under the law as it
 25 existed before July 1, 1973.

1 Section 17. This act applies to applications currently
2 pending with the department, as well as applications filed
3 with the department after the effective date of this act.

4 Section 18. This act is effective upon its passage and
5 approval.

-End-

COMMITTEE ON AGRICULTURE, LIVESTOCK & IRRIGATION

[illegible]

(Use Separate Sheet for Senate, House Bills, and Resolutions)

SENATE COMMITTEE

ON

AGRICULTURE, LIVESTOCK AND IRRIGATION

Minutes

February 19, 1975

The meeting of the Agriculture, Livestock and Irrigation Committee was called to order by Chairman Graham on the above date in Room 415 of the State Capitol Building.

ROLL CALL: All members were present. Senator Murphy came at 9:50 from another meeting.

The following witnesses were present to testify:

Ray Lybeck - Darigold Producers
Ed McHugh - Clover Leaf Dairy
E. G. Hartman - Skyline Dairy - Kalispell
Lee Anderson - Vita Rich Dairy
Dick Doyle - Meadow Gold
Al Dougherty - Montana Dairymen's Assoc.
Ken Kelly - Board of Milk Control
Ted Doney - Dept. of Natural Resources
Gary Wicks - Dept. of Natural Resources
Bill Sternhnagen - Anaconda Company
Senator Joe Roberts
Everett Snortland - Montana Farm Bureau
Dean Welborn - Beaverhead Co. Farm Bureau
Daniel Doyle - Water Users Irrigation Co.
Tom Durgan - self
Ray Durgan - self
Murle Skutum - self
Howard Carter - Park Co. Farm Bureau
Ed Skillman - Park Co. Farm Bureau

CONSIDERATION OF SENATE BILL 399:

Senator Boylan, District 38, was the sponsor of this bill. He said he had been out of the dairy business for three years. He said the dairymen have gone through a real rate increase in production. He said the number of producers has decreased rapidly. He felt the Milk Control Board law was to blame for many of the smaller producers going out of the business. He also felt the consumer was getting no protection under this law. The consumer should have the benefit if there is a surplus in milk.

Ray Lybeck, Darigold Producers from Kalispell, said he opposed this bill. What effects the distributor leads back to the producer.

Ed McHugh, Cloverleaf Dairy from Helena also appeared in opposition to this bill. He said they own their own farm and produce their own milk. He felt the state of Montana was doing very well with the production of milk. He felt if the price control were lost distributors would go out of business. He said they are the only distributors around Helena so the dairymen would then have to ship their milk at least 100 miles. He said the Milk Control Board is made up entirely of consumers. If the distributor goes out of business the consumer will also be hurt because it would mean less competition.

Brownie Hartman, Skyline Dairy, said the Milk Control Law has stablized the industry. If you look at it from the farmers standpoint you have to offer stablization, otherwise if there is not a stable price set, the farmers would probably not get the financing they need. He thought the bill would make organized caos.

Lee Anderson, Vita Rich Dairy, said he supported the stand taken by the other distributors. This bill could eliminate competition.

Dick Doylan, Meadow Gold Dairy from Missoula said the Milk Control Board protects the producer, the distributor and the consumer. He felt it was a good way of distributing milk in the state.

Al Dougherty, Dairymen's Association, felt this was a consumer oriented bill, but said there were no comsumers here in support of the bill.

Ken Kelly, Board of Milk Control, said this bill would seriously destroy our home deliveries and would be bad for the industry.

Senator Boylan in closing said that by passing this bill it might get more producers into the state. He said this bill puts the price at the producers level. The producers are at the mercy of the distributors now. He said the federal law is on the producers level.

CONSIDERATION OF SENATE BILL 395:

Senator Joe Roberts, District 11, is chief sponsor of the bill. He said the bill was introduced at the request of the Department of Natural Resources. He said the bill mainly deals with amendments to the 1973 Water Use Act.

Ted Doney, chief legal counsel for the Dept. of Natural Resources, said the bill was very complicated with some major and minor amendments. He then went through the bill section by section explaining what the amendments were.

Gary Wicks, Director of the Department of Natural Resources said that any water law can be complicated. The department is trying to make the water use act work better and serve the state and he felt these amendments would make this more possible.

17

Bill Sternhagen, Anaconda Company, said they would support this bill if two amendments were changed. The first amendment was on page 5, lines 17 through 21, and they felt this provision should be left in. The next amendment was on page 25, section 17. He requested that this section be deleted. He said this section would make the law retrospective. He said it would make it more convenient for the state agency that has to administer the law, but he felt it was not very good for the person who relies on the present law and who already has an application in.

Next the opponents were heard from.

Everett Snortland, Montana Farm Bureau, spoke first. A copy of his testimony is attached #3.

Dean Welborn, representing Beaverhead Co. Farm Bureau, spoke next. A copy of his testimony is attached #4.

Daniel Doyle, President of the Water Users Irrigation, spoke in opposition to the bill. A copy of his testimony is attached #5.

Tom Durgan, Ray Durgan, Murle Skutum and Howard Carter from Park Co. Farm Bureau also appeared in opposition to Senate Bill 395.

Ed Skillman, Park Co. Farm Bureau, said one of the amendments will shift the burden of proof on to the landowner that they own the water rights.

A question and answer period followed by the members of the committee.

CONSIDERATION OF SENATE BILL 373:

Senator Foster said he had another proposed amendment to the bill. He wanted to strike the present section 5 and insert a new one, attached #6. He also said it had been mentioned to him that the date of the application should be changed from Jan. 1 to the date the bill had been introduced which was Feb. 5, 1975.

Senator Conover made a motion that section 5 be deleted and the new section be inserted. Seconded by Senator Manley. Motion carried. Senator Nelson absent.

Senator Foster made a motion that February 5, 1975 be inserted and January 1, 1975 be stricken. Seconded by Senator Conover. Motion carried. Nelson absent.

DISPOSITION OF SENATE BILL 373:

Senator Manley moved that Senate Bill 373 DO PASS AS AMENDED. Seconded by Senator Conover. Motion failed with a roll call vote of 5 ayes and 6 nays. Senators Boylan, Aber, Galt, Kolstad, Nelson and Graham voting No.

ROLL CALL

AGRICULTURE, LIVESTOCK & IRRIGA. COMMITTEE

44th LEGISLATIVE ASSEMBLY 1975

Date 2-19

NAME	PRESENT	ABSENT	EXCUSED
SENATOR BOYLAN - Vice Chair.	X		
SENATOR ABER	X		
SENATOR CONOVER	X		
SENATOR FOSTER	X		
SENATOR GALT	X		
S. JOR JERGESON	X		
SENATOR KOLSTAD	X		
SENATOR MANLEY	X		
SENATOR MURPHY	X 9:50		
SENATOR NELSON	X		
SENATOR GRAHAM - Chairman	X		
SENATOR MCOMBER	X		

#2

Powder River Soil and Water Conservation District

BROADUS, MONTANA

February 7, 1975

RECEIVED

FEB 14 1975

Montana Dept. of Natural
Resources and Conservation
Gary Wicks, Director
32 South Ewing
Natural Resources Building
Helena, Montana 59601

MONT. DEPT. OF NATURAL
RESOURCES & CONSERVATION

Dear Mr. Wicks,

The Powder River Conservation District wishes to express their gratitude to the Dept. of Natural Resources and Conservation for their assistance. Ralph Saunders and the staff members assigned to the Broadus Office worked diligently helping the landowners file the declaration forms for existing beneficial water uses.

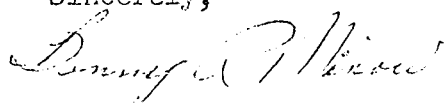
The staff members extended themselves beyond expectation in assuring that a large percentage of the citizens filed their declarations. Thereby the inventory was successfully completed with unsurmountable numbers of forms being filed for a multitude of beneficial uses of water.

Personal contacts by these men in assisting landowners with their water rights has made the public more aware of the new water law and how it affects him as an individual.

Many new development projects have received the personal attention of our staff here in the field. This has benefited the landowners in reduced time and better communications in issuing interim and provisional permits for future water use.

The professional manner and tactful handling of a sensitive topic as water rights speaks highly of each man as representatives of the Department of Natural Resources and Conservation and the State of Montana

Sincerely,



Chairman,
Powder River Conservation District

cc/ Rich Manger
Ralph Saunders
Scott Guenther
Rick French
Tom Reynolds
Jerry Thomas
Don Riddle

20

#3

TESTIMONY ON SENATE BILL 395
SENATE AGRICULTURE, LIVESTOCK AND IRRIGATION COMMITTEE
Room 415, 9:30 a.m., Wednesday, February 19, 1975

Mr. Chairman, Members of the Committee, my name is Everett Snortland. I am the Executive Legislative Director for the Montana Farm Bureau Federation. We are here today for the purpose of opposing SB 395.

We have several agriculture producers with us today who claim an existing water right and have reviewed the contents of SB 395, specifically Section 4, page 8, lines 9 through 16, and needless to say, they are somewhat upset by the fact that if SB 395 were passed the way it is now written, it would shift the burden of proof from the Department of Natural Resources to the individual claiming an existing water right. In other words, it would appear as though they would be guilty until proven otherwise; where the previous language which would be stricken puts the burden of proof on the Department rather than the individual who claims an existing water right. We hasten to add again government should be for the protection of the individual--not cause the individuals to protect themselves from the government.

We believe it is only sound that since the water now belongs to the State of Montana decreed by the new Constitution and implemented under the Montana Water Use Act, there can be no justification for shifting the burden of proof on the individual. We feel there is not sufficient justification to ask the individual producer after the proceedings have been commenced by the Department to take his time to prove a water right he has been using for, in many instances, many generations.

Mr. Chairman, Members of the Committee, it is my pleasure to introduce to you this morning_____.

Mr. Chairman, Members of the Committee, we ask that you do not concur with SB 395.

#4

TESTIMONY ON SENATE BILL 395
SENATE AGRICULTURE, LIVESTOCK AND IRRIGATION COMMITTEE
Room 415, 9:30 a.m., Wednesday, February 19, 1975

Mr. Chairman, Members of the Committee, my name is Dean Welborn of
representing Beantree Co. Farm Bureau
Dell, . Montana. I am here to speak in opposition to SB 395.

We feel strongly that water which has been adjudicated through the courts previously should not have to be readjudicated as states in SB 395. It seems to me SB 395 puts the burden of proof of our decrees on us and not the Department. We cannot afford the additional expense nortime to reprove our decrees again.

We understand the process that transpires to decree water rights since we have a long history of hard feelings, bitter battles, and in some cases blood shed. I, therefore, wish to emphasize my strong support for SB 383 and urge you to vote against SB 395.

22

11 5

TESTIMONY ON SENATE BILL 395
SENATE AGRICULTURE, LIVESTOCK AND IRRIGATION COMMITTEE
Room 415, 9:30 a.m., Wednesday, February 19, 1975

Mr. Chairman, Members of the Committee, my name is Daniel J. Doyle, Red Rock, Mt., Vice-President of Roe Ranch Company and President of the Water Users Irrigation Company of Lima Dam, Beaverhead County.

I am here to urge this Committee to consider our position in opposition to SB 395. It is my opinion that a decreed water right should be sufficient evidence of an existing water right. This was the impression that I received from attending hearings on the original water resources bill.

While the language of this bill does not say the Department won't accept a decree, it doesn't say that they need to without further proof on the part of the owner, including possible further court proceedings.

The language in SB 383 does establish a decree without this unnecessary ~~expense~~ expense and trouble.

Mr. Chairman, Members of the Committee, I urge you to vote no on SB 395.

SENATE COMMITTEE

ON

AGRICULTURE, LIVESTOCK AND IRRIGATION

Minutes

February 21, 1975

The meeting of the Agriculture, Livestock and Irrigation Committee was called to order by Chairman Graham on the above date in Room 415 of the State Capitol Building.

ROLL CALL: All members were present. Senator Murphy and Jergeson came in late.

CONSIDERATION OF SENATE BILL 395:

Senator Graham said the Farm Bureau had appeared in opposition to this bill when the hearing was held, but that he had received a call from them saying their lawyer had looked the bill over and now they had no objection to the bill.

Senator Manley moved to have reinserted into the bill, the stricken language on page 2, lines 17 through 20. Seconded by Senator Jergeson. Motion failed on a roll call vote of 5 to 5. Senators Boylan, Aber, Galt, Kolstad Nelson voting NO. Senator Murphy absent.

Senator Galt moved that Section 17 be deleted. He said this part made the bill retroactive. After some discussion he withdrew his motion.

Mr. Doney said the Department of Natural Resources would contact the water users in the area of application for a permit.

DISPOSITION OF SENATE BILL 395:

Senator Murphy made the motion that Senate Bill 395 DO PASS. Seconded by Senator Boylan. Motion carried. Senator Manley voting NO.

CONSIDERATION OF SENATE BILL 373:

Senator Foster made a motion that the committee reconsider its action on this bill. He wanted to amend the bill from 5 years to three years. He said there had been some concern that the five years would be excessive. Any applications that were received prior to February 5 would not be affected. The motion was seconded by Senator Murphy.

Orrin Ferris, from the Department of Natural Resources said this bill would not allow them to issue any permits during the time period specified. He said it would certainly allow them to spend more time on adjudication.

ROLL CALL

AGRICULTURE, LIVESTOCK & IRRIGATION COMMITTEE

44th LEGISLATIVE ASSEMBLY 1975

Date 2-21

NAME	PRESENT	ABSENT	EXCUSED
SENATOR BOYLAN - Vice Chair.	X		
SENATOR ABER	X		
SENATOR CONOVER	X		
SENATOR FOSTER	X		
SENATOR GALT	X		
SENATOR JERGESON	X		
SENATOR KOLSTAD	X		
SENATOR MANLEY	X		
SENATOR MURPHY	X 9:50		
SENATOR NELSON	X		
SENATOR GRAHAM - Chairman	X		

SENATE COMMITTEE AGRICULTURE, LIVESTOCK & IRRIGATION

Date 2-21 Senate Bill No. 395 Time

NAME	YES	NO
SEN. BOYLAN - Vice Chairman		X
SEN. ABER		X
SEN. CONOVER	X	
SEN. FOSTER	X	
SEN. GALT		X
SEN. JERGESON	X	
SEN. KOLSTAD		X
SEN. MANLEY	X	
SEN. MURPHY		
SEN. NELSON		X
SEN. GRAHAM - Chairman	X	
	5	5

Sally Watson
Secretary

Senator Carroll Graham
Chairman

Motion: Senator Manley moved that the stricken language be
reinserted on page 1, lines 17 through 20. Motion failed.

(include enough information on motion--put with yellow copy of committee report.)

Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
SB 310	Act to provide policy to preserve streams.	March 4	GREELY	March 11	BE CONCURRED IN AS AMENDED	MARCH 18
SB 395	Act to amend the Montana Water Use Act	March 11	ROBERTS Dept. of Nat. Res.	March 15	BE CONCURRED IN AS AMENDED	MARCH 20
SB 175	Rereferred to the committee	March 22	BROWN	March 26	BE CONCURRED IN WITH ADDITIONAL AMENDMENTS	March 26
SB 332	Rereferred to the committee	March 31	GRAHAM	April 1	BE NOT CONCURRED IN	April 1

MARCH 15, 1975

The Natural Resources Committee convened at 10:40 a.m. in room 437 on March 15, 1975, with Chairman Bradley presiding and a quorum present.

SB 395 SENATOR ROBERTS, the introducee for the Department of Natural Resources, said this bill made several amendments to the Water Use Act which was passed in 1973. He introduced Mr. Doney and said he would explain the amendments.

TED DONEY, Legal Counsel for the Department of Natural Resources, went through the bill. His discussion of the amendments is exhibit 1.

JIM POSEWITZ, Montana Fish and Game, spoke as an amender and a copy of his testimony is exhibit 2.

GORDON MCGOWAN, Montana Railroad Association, stated his company has no objection to the bill as it comes from the Senate. He said what it does is streamline and simplify the Water Use Act.

In his rebuttal Senator Roberts said he had no quarrel with Mr. Posewitz's testimony.

Also signing were:

Orris Ferris, Department of Natural Resources
Richard Munger, Department of Natural Resources
Ray Gulick, Small Business Administration, exhibit 3.

Questions were asked by the committee. In answer to a question from Rep. Day, Mr. Doney stated the Indians have a reservation right--they can have as much water as they need and they don't need to be using the water to reserve that right. He said they are claiming fairly extensive water rights. The question, he said, is whether they can sell those rights for another use. He didn't think so.

Chairman Bradley assigned the following subcommittee to study the bill: Reps. Meloy, Day, Ellison.

EXECUTIVE SESSION

SB 91 Rep. Day moved that SB 91 be concurred in. Rep. Meloy moved that the Land Department's suggested amendments in section 1, subsection (3) (a), and in subsection (b) a new subsection (ii) be added, and to renumber subsequent subsections (these suggested amendments are exhibit 4 in the March 8 minutes) be adopted. Motion carried unanimously with those present (absent were Reps. Jim Moore, Jack Moore, Huennekens, Barrett, Kemmis, Fishbaugh). The remainder of the suggested Land Department amendments were not accepted, as it was the feeling of the committee that 180 days was too long--all the water would be gone. Rep. Meloy moved the bill as amended be concurred in. Motion carried unanimously with same absent as before. Rep. Day will carry the bill on the floor.

NAME Ted J. Doney Bill No. SB395
ADDRESS 32 S. Ewing Date 3/15/75
WHOM DO YOU REPRESENT? Dept. Nat. Res. & Cons.
SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Mr. Doney went through the bill explaining the various amendments:

Page 2, lines 18 through 24--he said they have no objection to the Senate amendment made here.

Page 4, top of page, defines political subdivision so that irrigation projects will be included.

Page 5, lines 21 through 25, he said this language is superfluous and due to an error in drafting last year.

Page 6 through page 12 most important amendment in bill he said--under the current law when we adjudicate water rights the department issues the order requiring the people in the area to file within a year their claims--this would have this order coming from the district court and would bring in the federal agency filings who don't feel they need to if its only a state administrative process. He said tere is adjudication on the Tongue River now in a federal court and they would like to see it moved to a state court which he said had more expertise in these cases.

Page 13, line 19-25 and page 14, lines 1-3--this allows the department to cease action upon an application if it is not filed in good faith. He said they would need good evidence to do this and the purpose is to do away with speculation.

Page 15, lines 8-21, this would include oil and gas wells converted to water wells in the same category as regular water wells requiring their date of appropriation shall be the date of filing the notice of completion.

Page 17, lines 1-5, frees the department from having to advertise and have a hearing for every application permit.

Page 20, lines 13, through page 22, line 12--said this language clarifies what happens when someone sues somebody else over water rights. He said the law now doesn't say what the state is supposed to do.

Page 22, line 13, through page 24, line 2--this was a new section giving the department the power to issue cease and desist orders and it was removed by the Senate. He said they weren't arguing to have it put back in--but would like to have it.

Page 24, lines 8-11, says an appeal must be made within 10 days by an aggrieved party; lines 14-16 says statutory rules of evidence will not apply in their hearings unless agreed on by both parties--he said this would make proceedings more understandable by all..

TESTIMONY BEFORE THE HOUSE COMMITTEE ON NATURAL RESOURCES
ON SENATE BILL No. 395

Montana Department of Fish and Game
March 15, 1975

The Department of Fish and Game is directly involved in the implementation of the Water Use Act as it applies to the reservation of water for fish, wildlife and recreation. There are two items in this bill which concern us, and we would like to recommend one addition to the bill which will strengthen the act from a fish, wildlife and recreation standpoint.

On page 17, line 1, there is proposed a new subsection (3) to section 89-881 regarding Notice of Application. The Department of Fish and Game is presently receiving notices of water use applications on streams and lakes from the Department of Natural Resources and Conservation. This is at their discretion as authorized in section 89-881, subsection (1) of the act. Our concern with the proposed amendment to the section is that we will not be notified of water use applications in some waters where we have fish and wildlife values, and where we do not have a reservation of water. Although the Department of Natural Resources may rightly determine that the proposed withdrawal would not adversely affect the "rights" of other persons, the fish and wildlife resource might be adversely affected by such water withdrawal. We feel we should be notified to that extent. We recommend the new subsection (3) be changed to read as follows: (3) The requirements of subsections (1) and (2) of this section shall not apply if the department finds that the appropriation as proposed in the application will not adversely affect the rights of other persons, OR A FISH, WILDLIFE OR RECREATIONAL RESOURCE.

On page 20, line 1, the priority date of a water reservation is clarified under section 89-890, subsection (5). We agree this item needs clarification.

However, this bill provides that a reservation "shall date from the date the order reserving the water is adopted by the board, and shall not adversely affect any rights in existence at that time." The priority date for industrial, agricultural and domestic water use permits is the date of filing an application for a permit with the Department of Natural Resources as provided for in section 89-891, subsection (2). This bill would not change those priority dates, but would make the priority date for a reservation of water the date the order reserving the water is adopted by the board. This will penalize applicants for a water reservation. For example, with this bill the Department of Fish and Game or other public agency or municipality could file an application for reservation of water with the Department of Natural Resources. Four months later, but prior to approval of the reservation, some other person could file for an industrial water use permit on the same stream or lake. Even if the application for a reservation were approved several months sooner than the industrial application, the industrial water use permit would have an earlier priority date than the permit for a water reservation. We believe the establishment of priority dates should be the same for all water use permits and suggest changing section 89-890, subsection (5) of the bill to read as follows:

(5) A reservation under this section shall date from the date-the-order-reserving the-water-is-adopted-by-the-board FILING OF AN APPLICATION FOR A RESERVATION WITH THE DEPARTMENT, and shall not adversely affect any rights in existence at that time ~~when-the-order-reserving-waters-is-adopted.~~

The present Water Use Act contains no provisions for the consideration of fish, wildlife or recreational values in a body of water unless that body of water has a water reservation. A recent decision by the Department of Natural Resources in granting a water use permit illustrates this. We objected to the application for the permit and, at the hearing on the application, offered testimony as did other persons residing in the area. The decision of the Department of Natural Resources was that all testimony concerning fish, wildlife and recreation submitted at the

hearing was irrelevant and was not considered in the issuance of the permit. We understand the basis for that decision is now that department's policy and we can, therefore, expect the same lack of consideration when future water use permits are granted. Therefore, unless a water reservation has been established, fish, wildlife and recreational values are no better off now than they were before passage of the Water Use Act, notwithstanding that these values are now a statutory beneficial use.

The Department of Fish and Game is currently working on a program to reserve water in Montana streams and lakes. However, this is a lengthy and somewhat complicated process and it may be some time before reservations are established on all streams and lakes with fish, wildlife or recreational values. At the same time, water use permits for other beneficial uses, such as irrigation, are being granted on a regular basis. More complete and specific information is required of us by the Department of Natural Resources to justify a water reservation than is required of applicants for other water use permits. Without some consideration for fish, wildlife and recreation, we foresee the possibility that water will not be available (particularly in streams) in quantities sufficient to support aquatic resources at even present levels. Consequently, we feel language is needed in the act which will allow consideration of these resources. We, therefore, propose a new subsection (6) be added to section 89-885 of the act as follows: (6) The proposed use will not adversely affect fish, wildlife, or recreational values in existence at the time of the application as may be determined by the department upon submission of evidence by any person asserting that value.

Summary of Proposed Amendments to Senate Bill 395

Page 17, line 1.

Section 89-881 (3) The requirements of subsections (1) and (2) of this section shall not apply if the department finds that the appropriation as proposed in the application will not adversely affect the rights of other persons, OR A FISH, WILDLIFE OR RECREATIONAL RESOURCE.

Page 20, line 1.

Section 89-890 (5) A reservation under this section shall date from the date-the order-reserving-the-water-is-adopted-by-the-board FILING OF AN APPLICATION FOR A RESERVATION WITH THE DEPARTMENT, and shall not adversely affect any rights in existence at that time ~~when-the-order-reserving-waters-is-adopted.~~

Add a new subsection (6) to section 89-885 of the Water Use Act as follows:

(6) The proposed use will not adversely affect fish, wildlife or recreational values in existence at the time of the application as may be determined by the department upon submission of evidence by any person asserting that value.

NAME

LEON PERIS

Bill No.

5348

ADDRESS

32 S. Euclid

Date

WHOM DO YOU REPRESENT?

Dist of Nat Gas & Coal

SUPPORT

☒

OPPOSE

AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Red Doney will represent department.

BEST COPY
AVAILABLE

NAME Ray G. Galt Bill No. S 375
ADDRESS Tomball, Texas Date 2/1/55
WHOM DO YOU REPRESENT? Public Hearing
SUPPORT OPPOSE AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

BEST COPY
AVAILABLE

Waine water rights time limits before
there is no general public as landowner protests
to facilitate swift paper work processing.

State Department like to grab any rights they
can ~~State~~ should be the same as a person.

Fish and game are appreciable for some
reason.

Reckoned accepting immediate
as is.

Ray Galt
Tomball, Tex.

March 20, 1975

The Natural Resources Committee convened at 10:35 a.m. on March 20, 1975, in room 437 with Chairman Bradley presiding and a quorum present to take action on the following bills.

SB 175 Rep. Richards made a motion that SB 175 be concurred in as amended. Rep. Kemmis reviewed the main amendments to the bill which was exhibit 3 in the March 18 minutes. He mentioned it would provide an immediate effective date and would include larger reservoirs. There was discussion on reservoirs and the feeling seemed to be that this would not interfere with the farmer's use of their reservoirs but would give needed protection to the larger ones. Vote was taken on Rep. Richards' motion and it carried with eleven yes, Rep. Ellison abstained, and five absent (Reps. Quilici, Fishbaugh, Meloy, Day and Huennekens).

SB 395 Sue Roy, the committee researcher, at the request of Chairman Bradley, discussed the Fish and Game amendments (exhibit 1) to the bill. The third amendment, which would have the department specifically look at fish and wildlife value before issuing a certificate of appropriation, was looked at first. Rep. Luebeck moved this amendment (number 3 on exhibit 1) be adopted. Motion carried with Reps. Schye and Ellison voting no; and absent now being Reps. Quilici, Fishbaugh, Meloy as Reps. Day and Huennekens had come. Mrs. Roy went through the first amendment listed which would insure the Fish and Game Department would be notified of a water application. Rep. Ellison said this amendment would mean considering everybody with even a recreational interest in the stream before an appropriation could be granted. Rep. Schye felt the Department of Natural Resources has enough to do now with water adjudication problems and this would only tend to slow them down. He moved this amendment be not adopted and this motion carried unanimously with those present. Mrs. Roy went through the second amendment on the list. Rep. Ellison moved do not pass. Rep. Day felt this was a good one not only for the Fish and Game but for irrigation people as this would have reservations date from filing of the application rather than from the order of reserving the water, and made a substitute motion of do pass. Rep. Huennekens said he found himself in rare disagreement with Rep. Day. He said this would allow a big company to come in and file up all water and there wouldn't be anything left for the little fellow. He was informed the big companies can't reserve water--only state and federal agencies and municipalities. The motion of do pass carried with seven yes (Day, Bradley, Kemmis, Luebeck, Richards, Shelden, Stoltz); six no (Anderson, Barrett, Ellison, Huennekens, Jack Moore, Schye); four absent (Fishbaugh, Meloy, Jim Moore, Quilici). Rep. Stoltz moved be concurred in as amended. A roll call vote was taken and motion carried with the only one switching his vote being Rep. Huennekens who voted aye. Otherwise all voted as they did for the last amendment.

Chairman Bradley reminded the members to turn in their priority sheets on the resolutions. Rep. Day spoke in favor of HJR 53 saying it was by far the most important study that could be conducted in Montana. He said we are going into coal development and we don't know what it will do to our ground water. He said it is a possibility that the needed money could come from the impacted coal money. Rep. Schye said he would second Rep. Day's comments.

Rep. Luebeck spoke for the study on public access to public lands. He

said people are getting angrier and angrier. He said if we don't get this resolution we are prevented again from finding out what can be done.

Rep. Richards said HJR 17 is badly needed--to study programs to protect our prime agriculture land.

Chairman Bradley stated her concern for strip mining reclamation laws--she said responsibility should go beyond just passing laws and should include finding out how they are working. She suggested the committee, since its regular work was done, might have an oversight hearing at which they would invite representatives from different agencies, companies, interested citizen groups, universities who would have expertise in this area. She said she would like their reaction to this idea. She said the information given would be compiled and available for all to use.

Rep. Huennekens stated this could be a worthwhile new trend to extend the function of our House committees. He said so much work is done in haste and under pressure with insufficient background, and this could supply needed background for the future. He felt it was a good idea, and if a motion was necessary he so moved.

Rep. Richards said he seconded the motion. He asked if it were possible to hold this after the session.

Chairman Bradley said no because of the expense. It would need to be done while the committee is still together.

Rep. Day questioned the possibility of still making the Colstrip trip which due to weather had never been made.

Rep. Sheldon felt it was a good idea. He thought the committee should get together and look at the suggested agenda--that very specific questions be asked.

Chairman Bradley expressed the thought that it should be limited to what the committee could do--perhaps kept within the Reclamation Act.

Rep. Huennekens moved the committee recommend the Chairman look into the possibility of having an oversight hearing and bring a report to the committee on Saturday. Rep. Schye said he would like to see the Bureau of Mines represented. Motion carried unanimously with those present.

Meeting adjourned at 11:45 a.m.

Respectfully submitted,

Dorothy Bradley
Dorothy Bradley, Chairman

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March 20, 1975

COMMITTEE ON NATURAL RESOURCES AMENDMENTS TO SENATE BILL NO. 395.

Be amended in the third reading copy as follows:

1. Amend the title, page 2, line 2.

Following: "89-884,"

Insert: "89-885,"

2. Amend page 18, following line 11.

Insert: A new section 11 to read as follows and renumber subsequent sections.

"Section 11. Section 89-885, R.C.M. 1947, is amended to read as follows:

"89-885. Criteria for issuance of permit. The department shall issue a permit if:

- (1) there are unappropriated waters in the source of supply;
- (2) the rights of a prior appropriator will not be adversely affected;
- (3) the proposed means of diversion or construction are adequate;
- (4) the proposed use of water is a beneficial use;
- (5) the proposed use will not interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved;

(6) the proposed use will not adversely affect fish, wildlife or recreational values in existence at the time of the application as may be determined by the department upon submission of evidence by any person asserting that value." "

3. Amend page 20, former section 11, subsection (5), lines 2 and 3.

Following: The first "the"Strike: "date the order reserving the water is adopted by the board"Insert: "filing of an application for a reservation with the department"

AS SO AMENDED BE CONCURRED IN

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March 28, 1975

HOUSE OF REPRESENTATIVES

Committee of the Whole Amendment to NATURAL RESOURCES COMMITTEE
AMENDMENTS, dated March 20, 1975, to Senate Bill No. 395, third
reading copy as follows:

Amend amendment No. 2 (Section 11 (6))

1. Following: "will not"

Strike: "adversely affect"

Insert: "substantially destroy"

AND AS SO AMENDED

BE CONCURRED IN

SENATE BILL NO. 395

INTRODUCED BY ROBERTS

(BY REQUEST OF DEPARTMENT OF NATURAL RESOURCES)

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE MONTANA WATER USE ACT BY PROVIDING ADDITIONAL DEFINITIONS; ~~DELETING THE PROVISION THAT A USE OF WATER FOR SLURRY TO EXPORT COAL IS NOT A BENEFICIAL USE~~; DELETING THE POWER OF THE BOARD OF NATURAL RESOURCES AND CONSERVATION TO ADOPT RULES GOVERNING INTERIM APPROVAL OF A CHANGE OF AN APPROPRIATION RIGHT; PROVIDING THAT THE DEPARTMENT SHALL CEASE ACTION ON APPLICATIONS NOT IN GOOD FAITH OR NOT SHOWING A BONA FIDE INTENT TO APPROPRIATE WATER FOR A BENEFICIAL USE; REQUIRING THE DISTRICT COURT RATHER THAN THE DEPARTMENT TO ISSUE THE ORDER REQUIRING CLAIMANTS OF EXISTING RIGHTS TO FILE DECLARATIONS; CLARIFYING THE PRIORITY DATE FOR CONVERTED OIL OR GAS WELLS; ALLOWING SUSPENSION OF PUBLICATION OF NOTICE OF CERTAIN PERMIT APPLICATIONS; PROVIDING FOR EXTENSION OF TIME TO ACT ON AN APPLICATION; CLARIFYING THE PRIORITY DATE FOR RESERVATIONS OF WATER; CLARIFYING THE PROCEDURE TO BE FOLLOWED IN THE COURTS' SUPERVISION OF WATER DISTRIBUTION; PROVIDING A NEW SECTION FOR ADMINISTRATIVE ENFORCEMENT OF THE ACT; REQUIRING NOTIFICATION PRIOR TO HEARINGS BEFORE THE BOARD; SPECIFYING THE APPLICABILITY OF THE RULES OF EVIDENCE IN ADMINISTRATIVE HEARINGS; PROVIDING A SAVING CLAUSE;

AMENDING SECTIONS 89-867, 89-869, 89-872 THROUGH 89-876, 89-880, 89-881, 89-884, 89-885, 89-890, 89-896, 89-8-100, AND 89-8-101, R.C.M. 1947; AND PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 89-867, R.C.M. 1947, is amended to read as follows:

"89-867. Definitions. Unless the context requires otherwise, in this ~~act~~ chapter:

(1) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including geothermal water.

(2) "Beneficial use" means a use of water for the benefit of the appropriator, other persons, or the public, including, but not limited to, agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal power, and recreational uses; ~~provided, however, that a use of water for slurry to export coal from Montana is not a beneficial use. Slurry is a mixture of water and insoluble matter~~; PROVIDED, HOWEVER, THAT A USE OF WATER FOR SLURRY TO EXPORT COAL FROM MONTANA IS NOT A BENEFICIAL USE. SLURRY IS A MIXTURE OF WATER AND INSOLUBLE MATTER.

(3) "Appropriate" means to divert, impound, or

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withdraw (including by stock for stock water) a quantity of water, or in the case of a public agency to reserve water in accordance with section 89-890.

(4) "Existing right" means a right to the use of water which would be protected under the law as it existed prior to the effective date of this act July 1, 1973.

(5) "Groundwater" means any water beneath the land surface or beneath the bed of a stream, lake, reservoir, or other body of surface water, and which is not a part of that surface water.

(6) "Well" means any artificial opening or excavation in the ground, however made, by which groundwater is sought or through which it flows under natural pressures or is artificially withdrawn.

(7) "Permit" means the permit to appropriate issued by the department under sections 89-880 through 89-887.

(8) "Certificate" means the certificate of water right issued by the department under sections 89-879, 89-880 ~~(4)~~ (5), and 89-888.

(9) "Declaration" means the declaration of an existing right filed with the department under section 89-872.

(10) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility, or the application of water to anything but a beneficial use.

(11) "Political" subdivision means any county, incorporated city or town, public corporation or district created pursuant to state law, or other public body of the state empowered to appropriate water, but not a private corporation, association, or group.

~~(11)~~ (12) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, and the United States or any agency thereof.

~~(12)~~ (13) "Department" means the department of natural resources and conservation provided for in Title 82A, chapter 15.

~~(13)~~ "Director" means the director of natural resources and conservation, a position provided for in section 82A-1510.

(14) "Board" means the board of natural resources and conservation provided for in section 82A-1509.

(15) "Act" means the Montana Water Use Act and any subsequent amendments or additions thereto."

Section 2. Section 89-869, R.C.M. 1947, is amended to read as follows:

"89-869. Powers and duties of board. (1) The board may prescribe fees or service charges for any public service rendered by the department under this act or under Title 89, chapter 29, including fees for the filing of applications or for the issuance of permits and certificates. There shall be

1 no fees for the filing of declarations or for the issuance
2 of certificates of existing rights.

3 (2) The board may adopt rules necessary to implement
4 and carry out the purposes and provisions of this act. These
5 rules may include, but are not limited to, rules to:

6 (a) govern the issuance and terms of interim permits
7 authorizing an applicant for a regular permit under this act
8 to begin appropriating water immediately, pending final
9 approval or denial by the department of the application for
10 a regular permit;

11 (b) require the owner or operator of appropriation
12 facilities to install and maintain suitable controlling and
13 measuring devices;

14 (c) require the owner or operator of appropriation
15 facilities to report to the department the readings of
16 measuring devices at reasonable intervals, and to file
17 reports on appropriations; and

18 (d) regulate the construction, use and sealing of
19 wells to prevent the waste, contamination or pollution of
20 groundwater; and

21 ~~(e) govern the issuance and terms of interim approval~~
22 ~~authorizing an appropriator to change his appropriation~~
23 ~~right immediately pending final approval or denial by the~~
24 ~~department of the application for a proposed change in~~
25 ~~accordance with section 89-892.~~

1 (3) The board shall adopt rules providing for and
2 governing temporary emergency appropriations, without prior
3 application for a permit, necessary to protect lives or
4 property."

5 Section 3. Section 89-872, R.C.M. 1947, is amended to
6 read as follows:

7 "89-872. Declarations of existing rights. (1) The
8 department shall obtain from the district court ~~make~~ an
9 order pursuant to section 89-873 requiring each person
10 claiming an existing right within a specified area or from a
11 specified source to file a declaration of existing right
12 within one (1) year after the effective date of the order.
13 The department shall publish notice of the order once a week
14 for four (4) consecutive weeks prior to its effective date
15 in a newspaper of general circulation in the affected area.
16 Before the last date of publication, the department shall
17 also serve a copy of the order by certified mail upon each
18 appropriator or his successor in interest within the
19 specified area or from the specified source who has
20 requested mailed notice of the order or of whom the
21 department can readily obtain knowledge, and to each person
22 owning or being possessed of lands bordering on the stream
23 or source as ascertained from the land ownership records of
24 the appropriate county. The department shall file in its
25 records proof of service of the notice by affidavit of the

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1 publisher in the case of notice by publication, and by its
2 own affidavit in the case of service by mail.

3 (a) The department of fish and game may represent the
4 public for purposes of establishing any prior and existing
5 public recreational use in existing right determinations
6 under this act, provided that the foregoing shall not be
7 construed in any manner as a legislative determination of
8 whether or not a recreational use sought to be established
9 prior to July 1, 1973, is or was a beneficial use.

10 (2) A declaration shall be made under oath by each
11 person claiming an existing right to use water within the
12 specified area or from the specified source on a form
13 provided by the department. The department shall make the
14 forms available through its offices and the offices of the
15 county clerks and recorders. The information required by the
16 department may include, but is not limited to, the date of
17 appropriation, the date the water was first applied to a
18 beneficial use, the amount of water appropriated, the
19 purpose of the appropriation, the place and means of
20 diversion, the place of use, the time during which the water
21 is diverted and used each year, and a true copy or the
22 docket number of any judicial decree, notice, or other claim
23 or evidence upon which the existing right was initiated or
24 is based.

25 (3) Declarations shall be sent to the department by

1 certified mail, with a return receipt requested. The return
2 receipt is conclusive evidence of receipt, by the
3 department, of the declaration."

4 Section 4. Section 89-873, R.C.M. 1947, is amended to
5 read as follows:

6 "89-873. Filing of petition. (1) ~~The department shall,~~
7 ~~within a reasonable time after gathering all data necessary~~
8 ~~under section 7-{89-871}-of this act, file a petition for~~
9 ~~determination of existing rights in the source or area~~
10 ~~specified in the order made under section 8-{89-872}.~~ ~~The~~
11 ~~department shall file the petition in the district court of~~
12 ~~the judicial district in which the source or area is~~
13 ~~located.~~ Proceedings for the determination of existing
14 rights shall be commenced by the department in the district
15 court of the judicial district in which the source or area
16 is located. The department shall request by petition, and
17 the district court shall issue an order requiring each
18 person claiming an existing right within a specified area or
19 from a specified source to file a declaration as provided in
20 section 89-872.

21 (2) If the source or area is in two (2) or more
22 judicial districts, the department shall notify the district
23 court of each of the judicial districts of its intent to
24 file the petition. Within thirty (30) days of receipt of the
25 notice, the judges of those district courts shall agree on

which district judge shall hear receive the petition and shall notify the department of their decision. If the district judges fail to agree or to notify the department, the department shall file the petition in the district court of the judicial district in which it determines that the greatest number of persons--named--in-the-petition-reside existing rights are likely to be located."

Section 5. Section 89-874, R.C.M. 1947, is amended to read as follows:

"89-874. Contents of petition. (1) Within a reasonable time after gathering all data necessary under section 89-871, The petition the department shall state file with the district court the names of all persons who have filed declarations under section ~~8-89-872~~ of this act and of all other persons who appear from the data gathered by the department to have existing rights to the use of waters within the specified area or from the specified source.

(2) The department shall also file with the petition district court all data gathered under section ~~7-89-871~~ of this act.

(3) If the district court determines that additional data is necessary prior to issuing the preliminary decree in order to determine the extent of an existing right, it may direct the department or the person claiming the right to obtain the necessary data."

Section 6. Section 89-875, R.C.M. 1947, is amended to read as follows:

"89-875. Preliminary decree. (1) Within a reasonable time after the ~~filing-of-a-petition-for-determination-of existing-rights~~ department files with the district court the material required by section 89-874, the court shall issue a preliminary decree. The preliminary decree shall be based on the data submitted ~~with-the-petition~~ by the department and on any additional data obtained by the court.

(2) The preliminary decree shall contain the information, and make the determinations, findings, and conclusions, required for the final decree under section ~~89-877~~ of this act.

(3) The district court shall send a copy of the preliminary decree by certified mail with return receipt requested to the department and to each person named in the ~~petition-filed~~ material submitted under section ~~9-89-873~~ 89-874 of this act or named in the preliminary decree. The return receipt shall be appended to the preliminary decree. The costs of mailing the copies shall be paid by the department.

(4) A person named in the petition material or in the preliminary decree may inspect the data upon which the decree is based at any time, and he may purchase copies of any of the data."

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Section 7. Section 89-876, R.C.M. 1947, is amended to read as follows:

"89-876. Hearing on preliminary decree. (1) The department or a person named in the petition material filed under section 9-~~199-873~~ 89-874 of this act or named in the preliminary decree, or any other person for good cause shown, who objects to the preliminary decree is entitled to a hearing thereon before the district court.

(2) A request for a hearing shall be filed with the district court, and a copy served on the department by certified mail, within ninety (90) days after receipt of the preliminary decree. The district court shall, for good cause shown, reasonably extend this time limit if application for the extension is made within ninety (90) days after receipt of the preliminary decree. A person requesting a hearing on his objections to the preliminary decree shall also serve, by certified mail with return receipt requested, a copy of his request on any person whose rights or priorities will be affected if the objections are sustained in the hearing. The rights and priorities of a person who is not served shall not be affected by the result of the hearing.

(3) The request for a hearing shall contain a precise statement of the findings and conclusions, in the preliminary decree, with which the person requesting the hearing disagrees. The request shall specify the paragraphs

and pages containing the findings and conclusions to which objection is made. The request shall state the specific grounds and evidence on which the objections are based. The request shall also state the names of all other persons on whom it is served.

(4) If more than one person requests a hearing on objections to the preliminary decree, the court may in its discretion hold a single hearing. Each hearing shall be conducted as are other civil actions, but the parties to the hearing may by agreement and with the court's permission waive any of the procedural or evidentiary rules, or may submit only written evidence. Only evidence which is referred to in a request may be introduced in a hearing.

(5) In each hearing, the department shall be a party and is entitled to be heard on objections made by any person. The department shall be granted adequate time, prior to a hearing, to gather evidence pertinent to any objection to be heard in the hearing."

Section 8. Section 89-880, R.C.M. 1947, is amended to read as follows:

"89-880. Right to appropriate -- application for permit. (1) After ~~the effective date of this act~~ July 1, 1973, a person may not appropriate water except as provided in this act. A person may only appropriate water for a beneficial use. A right to appropriate water may not be

acquired by any other method, including by adverse use, adverse possession, prescription or estoppel; the method prescribed by this act is exclusive.

(2) Except as otherwise provided in subsection ~~(4)~~ (5) of this section, a person may not appropriate water or commence construction of diversion, impoundment, withdrawal, or distribution works therefore except by applying for and receiving a permit from the department. The application shall be made on a form prescribed by the department. The department shall make the forms available through its offices and the offices of the county clerks and recorders. The department shall return a defective application for correction or completion together with the reasons for returning it. An application does not lose priority of filing because of defects, if the application is corrected, completed and refiled with the department within thirty (30) days after its return to the applicant, or within a further time as the department may allow.

(3) The department may cease action upon an application for a permit and return it to the applicant when it finds that the application is not in good faith or does not show a bona fide intent to appropriate water for a beneficial use. An application returned for any of these reasons shall be accompanied by a statement of the reasons for which it was returned, and there shall be no right to a

priority date based upon the filing of the application. Returning an application pursuant to this subsection shall be deemed a final decision of the department.

~~(4)~~--(4) A permit issued prior to a final determination of existing rights is provisional and is subject to that final determination. The amount of the appropriation granted in a provisional permit shall be reduced or modified where necessary to protect and guarantee existing rights determined in the final decree. A person may not obtain any vested right, to an appropriation obtained under a provisional permit, by virtue of construction of diversion works, purchase of equipment to apply water, planting of crops, or other action, where the permit would have been denied or modified if the final decree had been available to the department.

~~(4)~~--(5) Outside the boundaries of a controlled groundwater area, a permit is not required before appropriating groundwater by means of a well with a maximum yield of less than one hundred (100) gallons a minute. Within sixty (60) days of completion of the well, the appropriator shall file notice of completion on a form provided by the department at its offices and at the offices of the county clerks and recorders. Upon receipt of the notice, the department shall automatically issue a certificate of water right. The original of the certificate

shall be sent to the county clerk and recorder, in the county where the point of diversion or place of use is located, for recordation. The department shall keep a copy of the certificate in its office in Helena. After recordation, the clerk and recorder shall send the certificate to the appropriator. The date of filing of the notice of completion is the date of priority of the right.

~~{5}--(6) Persons--required-to-file-well-logs-and-other information-under-the-laws-governing-the-conservation-of-oil-and-gas-and-who-do-so-in-compliance-with-these--laws--shall be--considered--to--have--complied--with--all--of-the-filing requirements-of-this-act-to-the-extent-it-applies--to--wells subject--to--those--laws--The-date-of-appropriation-shall-be the-date-that-written-notice-of-intention-to-drill-is--given to--the--board--of--oil--and--gas-conservation.~~ A person who desires to convert a nonproductive oil or gas well to a water well may do so immediately, but shall file a notice of completion or apply for a permit, depending on the maximum yield of the well, as otherwise provided in this act. The date of appropriation shall be the date of filing the notice of completion or the application for a permit.

~~{6}--(7)~~ A person may also appropriate water, without applying for or prior to receiving a permit, under rules adopted by the board under section 89-869 of this act."

Section 9. Section 89-881, R.C.M. 1947, is amended to

read as follows:

"89-881. Notice of application. (1) Upon receipt of a proper application for a permit, the department shall prepare a notice containing the facts pertinent to the application and shall publish the notice in a newspaper of general circulation in the area of the source once a week for three (3) consecutive weeks. Before the last date of publication, the department shall also serve the notice by certified mail upon an appropriator of water or applicant for or holder of a permit who, according to the records of the department, may be affected by the proposed appropriation. A notice shall also be served upon any public agency that has reserved waters in the source under section ~~26--{89-890}~~. The department may, in its discretion, also serve notice upon any state agency or other person the department feels may be interested in or affected by the proposed appropriation. The department shall file in its records proof of service by affidavit of the publisher in the case of notice by publication, and by its own affidavit in the case of service by mail.

(2) The notice shall state that by a date set by the department (not less than thirty (30) days nor more than sixty (60) days after the last date of publication) persons may file with the department written objections to the application.

1 (3) The requirements of subsections (1) and (2) of
 2 this section do not apply if the department finds, on the
 3 basis of information reasonably available to it, that the
 4 appropriation as proposed in the application will not
 5 adversely affect the rights of other persons."

6 Section 10. Section 89-884, R.C.M. 1947, is amended to
 7 read as follows:

8 "89-884. Action on application. (1) The department
 9 shall grant, deny, or condition an application for a permit
 10 in whole or in part within one hundred twenty (120) days
 11 after the last date of publication of the notice of
 12 application if no hearing is held, and within one hundred
 13 eighty (180) days if a hearing is held; however, in either
 14 case the time may be extended upon agreement of the
 15 applicant, or, in extraordinary cases, not more than thirty
 16 (30) days upon order of the department. If the department
 17 orders the time extended it shall serve a notice of the
 18 extension and the reasons therefor by certified mail upon
 19 the applicant and each person who has filed an objection as
 20 provided by section 89-882.

21 (2) However, an application may not be approved in a
 22 modified form or upon terms, conditions, or limitations
 23 specified by the department, nor denied, unless the
 24 applicant is first granted an opportunity to be heard. If
 25 no objection is filed against the application, but the

1 department is of the opinion that the application should be
 2 approved in a modified form or upon terms, conditions or
 3 limitations specified by it, or that the application should
 4 be denied, the department shall prepare a statement of its
 5 opinion and the reasons therefor. The department shall serve
 6 a statement of its opinion by certified mail upon the
 7 applicant, together with a notice that the applicant may
 8 obtain a hearing by filing a request therefor within thirty
 9 (30) days after the notice is mailed. The notice shall
 10 further state that the application will be modified in a
 11 specified manner, or denied, unless a hearing is requested."

12 SECTION 11. SECTION 89-885, R.C.M. 1947, IS AMENDED TO
 13 READ AS FOLLOWS:

14 "89-885. Criteria for issuance of permit. The
 15 department shall issue a permit if:

16 (1) there are unappropriated waters in the source of
 17 supply;

18 (2) the rights of a prior appropriator will not be
 19 adversely affected;

20 (3) the proposed means of diversion or construction
 21 are adequate;

22 (4) the proposed use of water is a beneficial use;

23 (5) the proposed use will not interfere unreasonably
 24 with other planned uses or developments for which a permit
 25 has been issued or for which water has been reserved;

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(6) the proposed use will not adversely---affect
SUBSTANTIALLY DESTROY fish, wildlife or recreational values
in existence at the time of the application as may be
determined by the department upon submission of evidence by
any person asserting that value."

Section 12. Section 89-890, R.C.M. 1947, is amended to read as follows:

"89-890. Reservation of waters. (1) The state or any political subdivision or agency thereof, or the United States or any agency thereof, may apply to the board to reserve waters for existing or future beneficial uses, or to maintain a minimum flow, level, or quality of water throughout the year or at such periods or for such length of time as the board designates.

(2) Upon receiving an application, the department shall proceed in accordance with sections ~~17-through-19~~ ~~180-181 through 180-183~~. After the hearing provided in section ~~19--180-183~~, the board shall decide whether to reserve the water for the applicant. The department's costs of giving notice, holding the hearing, conducting investigations, and making records, incurred in acting upon the application to reserve water, except the cost of salaries of the department's personnel, shall be paid by the applicant.

(3) The board may not adopt an order reserving water

unless the applicant establishes to the satisfaction of the board:

(a) the purpose of the reservation;

(b) the need for the reservation;

(c) the amount of water necessary for the purpose of the reservation;

(d) that the reservation is in the public interest. If the purpose of the reservation requires construction of a storage or diversion facility, the applicant shall establish to the satisfaction of the board that there will be progress toward completion of the facility and accomplishment of the purpose with reasonable diligence in accordance with an established plan.

(4) After the adoption of an order reserving waters, the department may reject an application and refuse a permit for the appropriation of reserved waters, or may, with the approval of the board, issue the permit subject to such terms and conditions it considers necessary for the protection of the objectives of the reservation.

(5) A reservation under this section shall date from
the date--the--order--reserving-the-water-is-adopted-by-the
board FILING OF AN APPLICATION FOR A RESERVATION WITH THE
DEPARTMENT, and shall not adversely affect any rights in
existence at that time when-the-order--reserving--waters--is
adopted.

(6) The board shall, periodically but not less than every ten (10) years, review existing reservations to ensure that the objectives of the reservation are being met. Where the objectives of the reservation are not being met, the board may extend, revoke or modify the reservation."

Section 13. Section 89-896, R.C.M. 1947, is amended to read as follows:

"89-896. Supervision of water distribution. (1) ~~As--of the--effective--date--of--this--act, the~~ The district courts shall supervise the distribution of water among all appropriators. This supervisory authority includes the supervision of all water commissioners appointed prior or subsequent to the effective date of this act. The supervision shall be governed by the principle that first in time is first in right.

(2) When a water distribution controversy arises upon a source of water in which existing rights have not been determined according to sections ~~6--through--15--~~89-870 through ~~89-870--of--this--act~~, any party to the controversy may petition the district court for relief. the The department ~~may~~, shall be served with process in any proceeding under this subsection and shall, within a reasonable time thereafter, notify the court whether it intends in its discretion, within a reasonable time, to begin proceedings to determine existing rights in the

source, in accordance with this act. The department may, if it declines to commence proceedings to determine existing rights in the source, intervene as a party in the proceeding. The district court from which relief is sought may grant such injunctive or other relief which is necessary and appropriate to preserve property rights or the status quo pending the department's decision whether to determine existing rights in the source, or the department's decision to intervene as a party, as the case may be. If the department does not proceed to obtain a determination of existing rights, the district court shall settle only the controversy between the parties.

(3) A controversy between appropriators from a source which has been the subject of a general determination of existing rights under sections ~~6--through--15--~~89-870 through ~~89-870--of--this--act~~ shall be settled by the district court which issued the final decree. The order of the district court settling the controversy may not alter the existing rights and priorities established in the final decree. In cases involving permits issued by the department, the court may not amend the respective rights established in the permits or alter any terms of the permits unless the permits are inconsistent or interfere with rights and priorities established in the final decree. The order settling the controversy shall be appended to the final decree, and a

copy shall be filed with the department. The department shall be served with process in any proceeding under this subsection, and the department may, in its discretion, intervene in the proceeding.

(4)--The department shall be named as a party in any proceeding under this section and shall be served with process."

Section 13. There is a new R.C.M. section numbered 89-879.1 that reads as follows:

89-879.1. Enforcement. (1) A person may not waste water, prevent water from moving to another person having a prior right to use the same, or otherwise use water unlawfully.

(2) If the department ascertains by a means reasonably considered sufficient by it that a person is violating subsection (1) of this section or is otherwise violating any provision of this act or a rule made pursuant thereto, it may cause written notice to be served on the alleged violator. The notice shall specify the provision of this act or rule alleged to be violated, and the facts alleged to constitute a violation, and it may order the violator to take necessary corrective action within a reasonable period of time stated in the order. The order becomes final unless, no later than thirty (30) days after the date the notice is received, the person named requests in writing a

hearing before the department. Not more than fifteen (15) days after receipt of the request, the department shall hold a hearing.

(3) If, after a hearing held under subsection (1) of this section, the department finds that a violation has occurred, it shall either affirm or modify the order previously issued, or issue an appropriate order for the prevention or abatement of the violation involved or for the taking of other corrective action it considers appropriate. If, after hearing on an order contained in a notice, the department finds that no violation is occurring, it shall rescind the order. An order issued as part of a notice or after hearing may prescribe the date by which the violation shall cease and may prescribe time limits for particular action in preventing, abating, or controlling the violation.

(4) The department may direct its own attorney, or request the attorney general or the county attorney to enforce orders issued pursuant to this section by appropriate judicial proceedings.

(5) This act does not prevent the department from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means.

Section 14. Section 89-8-100, R.C.M. 1947, is amended to read as follows:

"89-8-100. Hearings before board -- Administrative

1 Procedure Act. (1) A person who is aggrieved by a final
 2 decision of the department under this act is entitled to a
 3 hearing before the board. A person desiring a hearing
 4 before the board pursuant to this section shall notify the
 5 department in writing within ten (10) days of the final
 6 decision.

7 (2) The Montana Administrative Procedure Act (Title
 8 82, chapter 42, R.C.M. 1947) governs administrative
 9 proceedings conducted under this act, except that the common
 10 law and statutory rules of evidence shall apply only upon
 11 stipulation of all parties to a proceeding."

12 ~~Section 15,--Section 89-8-101,--R.C.M.--1947,--is--amended~~
 13 ~~to read as follows:~~

14 ~~"89-8-101,--Penalties,--A person who--violates--or~~
 15 ~~refuses--or neglects to comply with sections 16-(1), 20-(1),~~
 16 ~~and 29-(3)--(89-800-(1), 89-892-(1), and--89-893--(3),--and~~
 17 ~~89-897,1--of this act, or of any order of the department,~~
 18 ~~or of any rule of the board, is guilty of a misdemeanor."~~

19 Section 15. There is a new R.C.M. section numbered
 20 89-8-102.1 that reads as follows:

21 "89-8-102.1. Saving clause. Nothing in this act abates
 22 or otherwise adversely affects the validity of any filing,
 23 notice, or judicial proceeding commenced under the law as it
 24 existed before July 1, 1973.

25 Section 16. This act applies to applications currently

1 pending with the department, as well as applications filed
 2 with the department after the effective date of this act.
 3 Section 17. This act is effective upon its passage and
 4 approval.

-End-

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